

CAUSE NO. D230014C

PATRICK AND MELLISSA KILLINGSWORTH,
INDIVIDUALLY AND AS PARENTS AND NEXT
FRIENDS OF P.K., A MINOR CHILD,

PLAINTIFFS,

VS.

EVANGELICAL LUTHERAN TRINITY
CONGREGATION,

DEFENDANT.

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IN THE DISTRICT COURT OF

TOM GREEN COUNTY, TEXAS

391st JUDICIAL DISTRICT

PLAINTIFFS' SECOND AMENDED PETITION

1. Patrick and Mellissa Killingsworth, like many parents across the state of Texas, were working parents who relied on Trinity Lutheran to provide a safe and educational environment for their 4-year-old daughter, P.K.¹ Trinity Lutheran promised to put “Qualified, experienced, well-trained teachers,” in the classroom.² Instead, Trinity Lutheran was short-staffed, constantly scrambling to put teachers in the classrooms. After ignoring months of clear, loud, and direct warning signs from a teacher on the path toward a mental and emotional meltdown, Trinity Lutheran put that teacher in charge of a classroom of preschoolers. On March 24th, 2021, that Trinity Lutheran Teacher had the mental and emotional meltdown she warned was coming. Four-year-old P.K. was subjected to *continuous yelling, screaming, ridiculing, belittling, shoving, pushing, yanking, dragging, and hitting* – changing her forever. At every moment Trinity Lutheran had to intervene and save P.K., they failed. Patrick and Mellissa Killingsworth bring this lawsuit on their family’s behalf asking for answers and asking that Trinity Lutheran accept responsibility.

¹ This Petition refers to Defendant Evangelical Lutheran Trinity Congregation as “Trinity Lutheran.”

² Trinity Lutheran School’s website, March 2021.

I. FACTS: THE STORY OF TRINITY LUTHERAN'S FAILURES

MONTHS OF STAFFING ISSUES, BROKEN PROMISES & PRETENDING THE WARNING SIGNS WERE NOT CLEAR, LOUD & DIRECT ULTIMATELY CHANGED A LITTLE GIRL'S LIFE FOREVER

2. Patrick and Mellissa Killingsworth chose Trinity Lutheran because they believed in its mission: "To share the love of God, through Christ, with all his children by educating, encouraging, and equipping them for a life of Christian service."³ Trinity Lutheran publicizes and sells parents on the idea that this preschool is dedicated to creating a nurturing and safe learning environment for their children. Patrick and Mellissa Killingsworth believed that at the very least, their daughter would be safe.

3. But on March 24th, 2021, the Trinity Lutheran Teacher, had a mental and emotional breakdown in the classroom – the meltdown that Trinity Lutheran knew was coming for *over four months*. On the day of the March 24th Meltdown, the Trinity Lutheran Teacher was caught on camera subjecting 4-year-old P.K. to hours of inappropriate discipline – yelling, screaming, ridiculing, belittling, shoving, pushing, yanking, dragging, and hitting.

4. Trinity Lutheran's failures were in every ignored alarm and every ignored opportunity to intervene. Trinity Lutheran's failures were in every moment they chose to ignore their teacher's clear, loud, and direct warning signs and put every kid in the classroom at risk. Those failures put 4-year-old P.K. at ground zero for the March 24th Meltdown, leaving a lifelong impact on a little girl they were supposed to keep safe.

³ *Trinity Lutheran School's website*, <https://www.trinityschools.com> (last visited July 24, 2023).

TRINITY LUTHERAN IGNORED THE ALARMS

5. A mental and emotional meltdown is a lot like a nuclear reactor starting to overheat. From the outside, the structure is still standing, and the lights are still on. But inside, the temperature is rising. The pressure is building. The system is being pushed past what it can handle. **There are always warning signs before the meltdown.**

6. The alarms take the form of outcries for help – clear, loud, and direct. If no one steps in to lower the heat, release the pressure, or help stabilize the system, the alarms keep blaring until the person has nothing left. **The meltdown is *not* sudden at all.** Rather, it is the result of pressure that had been building for a long time.

7. By the time the person breaks, the failure is not just in the moment of the meltdown. The failure is in every ignored warning sign, every dismissed cry for help, and every ignored opportunity to intervene. The meltdown is bigger than the system that failed, leaving a path of destruction that cannot simply be cleaned up by pretending the alarms were not real.

8. The simple truth is Trinity Lutheran had received countless clear, loud, and direct alarms of the impending meltdown – they just chose to ignore them.

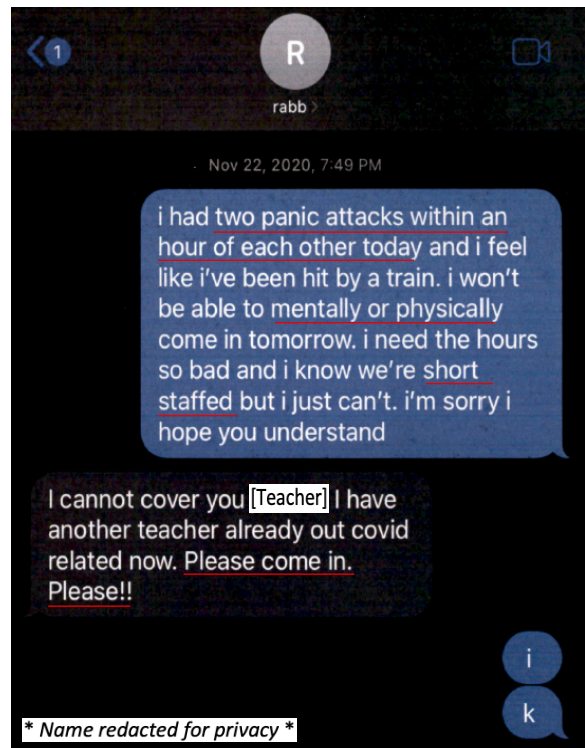
FOUR MONTHS BEFORE THE MARCH 24th MELTDOWN

November 2020

9. Four months before the March 24th Meltdown, the Trinity Lutheran Teacher’s mental health started to decline. She had suffered a miscarriage and was having regular panic attacks that increased in frequency, duration, and severity. By November 22nd, 2020, her mental and emotional state was so poor that she was experiencing multiple panic attacks a day.

10. On **Sunday, November 22nd, 2020**, the Teacher sends Trinity Lutheran’s Director, Tracy Rabb, a clear, loud, and direct alarm about the status of her physical, mental, and emotional health.

11. In response, Tracy the Director *pleads* with the Teacher to come in anyway – a teacher that just told her she has had two panic attacks in an hour, feels like she has been hit by a train, and **can’t mentally or physically come into work**.



12. Tracy the Director did not just *ask* the Teacher to come into work – she **begged** her to come in. Why? Because Trinity Lutheran was **short staffed** and would be in “**real trouble**” if they were short another person:

[Teacher] is trying to call in as well. I have begged her to come in. Hopefully she will show. If not I'm in real trouble. She said ok so I hope she stands by that.
* Name redacted for privacy *

← Text message sent by **Tracy the Director to Trinity Lutheran’s Principal, Ron Fritsche, on November 22nd, 2020.**

13. Ron the Principal agrees that the November 22nd, 2020, text message was an alarm that should have been taken seriously. But when he was provided this exact alarm via text message from both Tracy the Director and the Trinity Lutheran Teacher – **he did nothing**.

14. The Trinity Lutheran Teacher worked Monday, November 23rd, 2020, and Tuesday, November 24th, 2020. In fact, she came into work every day, as scheduled, through Friday, December 18th, 2020.

15. From November 2020 through the March Meltdown, the Trinity Lutheran Teacher's mental, emotional, psychological, and physical health was worsening. She continued to suffer from regular and severe panic attacks, anxiety, depression, an eating disorder, episodes of vomiting, insomnia, and suicidal ideations. Her panic attacks became so frequent that she was having them at Trinity Lutheran – in front of Tracy the Director and Ron the Principal.

Q. And so, it's your testimony here today on the record that [Trinity Lutheran Teacher] had more than one panic attack in your office on the premises at Trinity Lutheran before March 24, 2021, correct?

A. Yes.⁴

(Deposition Testimony of Tracy Rabb, Director of Trinity Lutheran)

16. The Trinity Lutheran Teacher's calls for help were obvious. Tracy the Director was aware of the Teacher's problems and knew she was calling out of work and had attempted to quit:

Q. So months before March 24, 2021, you were aware that [Trinity Lutheran Teacher] was having some problems to the point that she would sometimes try and call out of work, true?

A. True.⁵

Q. And [Trinity Lutheran Teacher], you understand that she had tried to quit before March 24, 2021, correct?

A. She had.⁶

(Deposition Testimony of Tracy Rabb, Director of Trinity Lutheran)

17. Trinity Lutheran did not give their Teacher the time off she so desperately asked for. By February 21st, 2021, the Trinity Lutheran Teacher was *regularly* reaching out to communicate her ongoing mental, emotional, and physical health issues. She showed up to work every day Trinity Lutheran was operating – *except* the week of February 22nd through February 26th, 2021.

⁴ Deposition of Tracy Rabb, Director of Trinity Lutheran: Page 242, Lines 20-24.

⁵ Deposition of Tracy Rabb, Director of Trinity Lutheran: Page 238, Line 23, through Page 239, Line 2.


⁶ Deposition of Tracy Rabb, Director of Trinity Lutheran: Page 249, Lines 17-19.


ONE MONTH BEFORE THE MARCH MELTDOWN


February 23rd – 24th, 2021


18. Why did the Trinity Lutheran Teacher not come into work for the week of February 22nd – 26th, 2021? – **her mental, emotional, psychological, and physical health got so bad that she ended up in the hospital.**


19. At 7:13am on **Tuesday, February 23rd, 2021**, the Trinity Lutheran Teacher sends **another clear, loud, and direct alarm** to Tracy the Director:


 She has been “very suicidal” over the last few days


 She cannot come into work for the rest of the week


 Her mental state is “one day at a time”

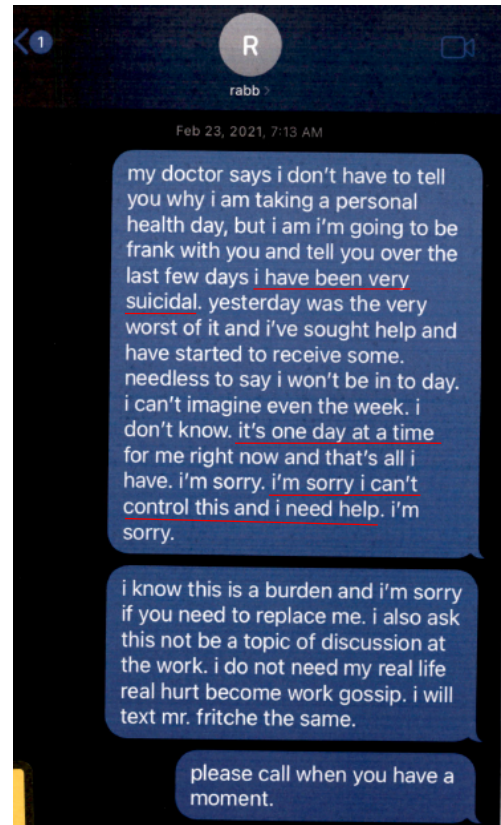
 She is sorry and she “can’t control this”

 She needs help

 She knows her needs are a burden

 She is sorry if Trinity Lutheran needs to replace her

 She will text Ron the Principal the same



20. On that same day, the Trinity Lutheran Teacher sent this same February 23rd, 2021, text message to Ron the Principal – she even asked him to call her when he had a moment. Tracy the

Director had an in-person conversation with Ron the Principal about the Teacher's messages. Ron the Principal chose not to respond.

FEBRUARY 24th, 2021 – EXACTLY ONE MONTH BEFORE THE MARCH 24th MELTDOWN

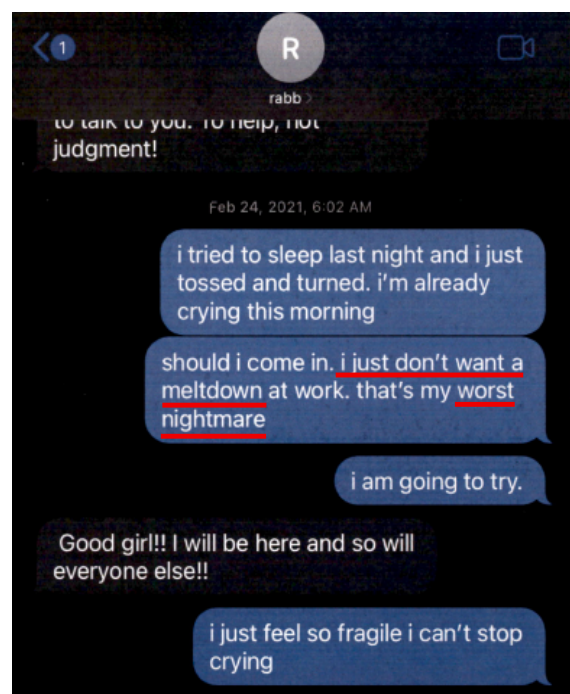
21. Exactly one month before the March 24th Meltdown, at 6:02am, Wednesday, February 24th, 2021, the Trinity Lutheran Teacher sends the most chilling alarm to Tracy the Director:

“i just don't want a meltdown at work. that's my worst nightmare”

22. She tells Tracy the Director that she was unable to sleep all night and is so fragile that she cannot stop crying. She even ASKS Tracy the Director IF she should come into work that day.

23. Rather than respond to the alarm that a meltdown was approaching, Tracy the Director has the Trinity Lutheran Teacher come in anyway – “Good girl!!” she tells her.

24. On Wednesday, February 24th, 2021, the Teacher *did* show up to Trinity Lutheran. She spent the entire time **crying and shaking on the floor of Ron the Principal's office** before being allowed to leave and seek medical help. She left Trinity Lutheran and went straight to the hospital – which was known to Trinity Lutheran. Upon discharge, she was prescribed Zoloft and Xanax.

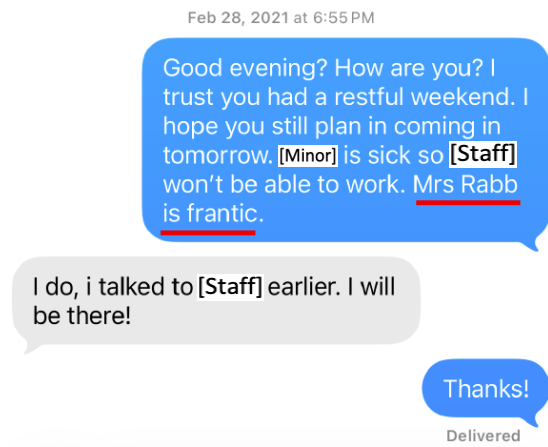


25. According to Trinity Lutheran’s time records, the Teacher took **just one additional day off work** – Friday, February 26th, 2021 – following her hospital stay and the clear, loud, and direct warning telling Trinity Lutheran that she was suicidal and her worst nightmare was having a meltdown at work.

26. Tracy the Director was not the only person who pressured the Trinity Lutheran Teacher to come into work – Ron the Principal pressured her to come in right after the clearest, loudest, and most direct alarms the Trinity Lutheran Teacher set off.

27. On **Sunday, February 28th, 2021**, just days after the Trinity Lutheran Teacher’s alarming text messages, the crying and shaking on the floor of Ron the Principal’s office, and the hospital stay, Tracy the Director texts Ron the Principal, **“frantic”** because she knows Trinity Lutheran is short staffed and if the Teacher doesn’t come into work, she **“can’t cover”** the classrooms.

28. At **6:55pm, Sunday, February 28th, 2021**, rather than tell the Trinity Lutheran Teacher to stay home, take the time she needs to improve her health, or request she return with a note from her treating physical that she is cleared to return to work, Ron the Principal pressures the Trinity Lutheran Teacher to come in:



(Text message from Ron the Principal to the Trinity Lutheran Teacher on Feb. 28th, 2021)

“I hope you are still planning to come in tomorrow. [Redacted] is sick so [redacted] won’t be able to work. Mrs. Rabb is frantic.”

(Names of minor child and Trinity Lutheran Staff member redacted for privacy)

29. The Trinity Lutheran Teacher **returned to work on Monday, March 1st, 2021**. Trinity Lutheran had no concerns with putting the Teacher who just days before had communicated she

was having suicidal ideations, could not sleep, was crying uncontrollably, felt fragile, and was terrified of having a meltdown at work. Without even asking if she was okay to come in or confirming she had received the help she needed – Trinity Lutheran pressured their Teacher to come to work because they were frantic about one thing, and one thing only – staffing.

30. By **Monday, March 1st, 2021**, Trinity Lutheran had received, ignored, and dismissed the following clear, loud, and direct alarms:



Their Teacher was having **regular panic attacks** that worsened in severity, frequency, and duration – **some occurring in Tracy the Director’s office** and at least one **occurring in Ron the Principal’s office**.



Their Teacher **trying to call out of work several times** and even **trying to quit** her job – telling Tracy the Director **she couldn’t physically or mentally come in**.



Their Teacher **seeking medical attention often** – with **Tracy the Director even taking her to her doctor’s appointments** on occasion.



Their Teacher being **hospitalized more than once**.



Their Teacher reporting she has been **suicidal**.



Their Teacher reporting that she was **not sleeping** and having **uncontrollable bouts of crying**.



Their Teacher reporting that she felt **fragile**, felt like a **burden**, and **needed help**.



Their Teacher reporting that their **worst nightmare was having a meltdown at Trinity Lutheran**.

31. The Trinity Lutheran Teacher worked every shift she was scheduled for in March up until the March 24th Meltdown. Her panic attacks continued. She wasn’t sleeping, wasn’t eating, and was experiencing moments of forgetfulness. Her coworkers were even noticing that she was a little “off” and “zoned out,” reporting that she would fall behind in the daily class schedule, didn’t

seem like she was comprehending a lot and was speaking very fast, and was not aware of obvious things such as spilling hot coffee on her hand.

32. At every alarm, Trinity Lutheran failed. Trinity Lutheran failed to listen, see, and act on what was right in front of them... until finally, the temperature got too high, and the pressure could no longer be contained. **The Trinity Lutheran Teacher had the Meltdown she warned everyone was coming.**

THE MARCH 24th MELTDOWN

Wednesday, March 24th, 2021

33. On **Wednesday, March 24th, 2021**, 4-year-old P.K. was screamed at, belittled, ridiculed, and physically hit, shoved, and dragged around by Trinity Lutheran's Teacher – a teacher hired, trained, and supervised by Trinity Lutheran. A teacher that Trinity Lutheran knew had been on the path to a complete mental and emotional Meltdown for months leading up to March 24th, 2021.

Q. And sitting here today, it is crystal clear and we all know now that despite having a month's notice that this teacher herself felt that she was going to have a meltdown at work and it would be her worst nightmare, she, in fact, did have a meltdown at work on March 24th, 2021?

A. Uh-huh.⁷

(Deposition Testimony of Ron Fritsche, Principal of Trinity Lutheran)

34. Tracy the Director left campus at approximately **9:15am** for a doctor's appointment, returning to campus by **10:15am**. During that one-hour time frame, Trinity Lutheran's preschool was left without an acting Director in the building.

MISSING SURVEILLANCE CAMERA FOOTAGE

Trinity Lutheran Chose Not to Save & Preserve All the Footage

⁷ Deposition of Ronald Fritsche, Principal of Trinity Lutheran: Page 224, Line 25 through Page 225, Line 6.

35. The surveillance camera system at Trinity Lutheran was put in place in mid-2019 following the discovery of a male Trinity Lutheran employee sexually assaulting multiple children on campus in the Trinity Lutheran preschool. Surveillance cameras located in Room 9 – P.K.’s classroom – and throughout the preschool are broadcasted to a screen located in the office of Tracy the Director.

36. Both Tracy the Director and Ron the Principal had access and the ability to watch the live feed, replay past video, download, save, and preserve video footage. Surveillance footage from March 24th, 2021, captures the visual and audio of the Trinity Lutheran Teacher’s Meltdown. However, **a significant amount of the day is missing because Trinity Lutheran chose not to save and preserve the entire days’ worth of video footage – despite having the ability to do so.**

37. According to Tracy the Director, it was her regular practice to check in on the live feed stream of the video cameras three to five times a day to supervise the teachers, caregivers, aides, and other staff and students she was responsible for.

38. But on March 24th, 2021, Tracy the Director did NOT drop in to the Trinity Lutheran classroom, nor did she check in on the live feed of the cameras the entire day. Had Tracy the Director supervised the Trinity Lutheran Teacher at all, this is what she would have seen:

***** PARTIAL VIDEO FOOTAGE FROM THE MORNING OF MARCH 24th, 2021 ***
FROM 9:41:51am through 9:53:27am**

39. The first video Trinity Lutheran chose to save begins at **9:41am**, with P.K. and the other children in the classroom taking a test. P.K. can be seen quietly flipping through the pages of her test, obviously trying to get on the same page as the rest of the class when she raises her hand and asks for help from the Trinity Lutheran Teacher. Instead of helping P.K., the Trinity Lutheran Teacher begins screaming and belittling her:

**“You are not going to kindergarten, [P.K].
You are a baby! You need help!
You can’t do anything!
She can figure it out herself!
She got something wrong in her brain.
You need to take your test in the bathroom.
I’ll tell you what she knows! It’s about... about... nothing but, nothing but poop.
You even poop all over my bathroom but doesn’t know how
to listen to anything!”**

40. P.K. begins to cry and goes to grab a tissue. The Trinity Lutheran Teacher continues to mock her crying and whimpers as the class watches:

**“So embarrassing, [P.K.]. You are so embarrassing.
You are so embarrassing. Everybody look at [P.K.], how embarrassing.
Aw, so embarrassing.
All of your friends are looking at you. Like you are so embarrassing.
Get it together.”**

41. By **9:51am**, 4-year-old P.K. is crying, asking for her mommy and daddy. Suddenly, the Trinity Lutheran Teacher storms over to P.K., yanks her test packet from her desk, stomps to the front door, and presses the call button from the intercom to the front desk. Before the call button is answered, the Trinity Lutheran Teacher turns around and **smacks a pencil from P.K.’s hand** while yelling **“Get out of my class! Get out!”** and then **shoves the test at P.K.** before opening the door and putting P.K. in the doorway.

42. P.K. is hysterically crying in the doorway, just feet away from the speaker for the intercom when another Trinity Lutheran staff member comes over the speaker. Clearly unable to hear what the Trinity Lutheran Teacher is saying over the screams of P.K., the staff member eventually says she will come to the class to get P.K., but the Trinity Lutheran Teacher was impatient and decided to send P.K. out into the hallway, hysterically crying. Before slamming the classroom door, the Trinity Lutheran Teacher sees another staff member and begins ranting and screaming into the hallway about how she doesn’t want P.K. in her class so she is kicking her out.

43. **From 9:52am through 10:00am**, P.K. is in the front office with Ron the Principal who was called over to the building by a staff member when P.K. was thrown out of the classroom.

44. While Tracy the Director is off campus, Ron the Principal is the one who is supposed to be in charge of supervising the Trinity Lutheran preschool staff.

45. Ron the Principal returns P.K. to the classroom at **10:00am**, as the kids are lining up for recess. **Before returning P.K. to her classroom, Ron the Principal:**

Did NOT watch the surveillance video footage from the classroom that morning.

Did NOT ask any of the Trinity Lutheran staff what they saw or heard.

Did NOT document that P.K. had been thrown out of the classroom.

Did NOT call P.K.'s parents to notify them.

Did NOT investigate what happened to cause the Trinity Lutheran Teacher to kick P.K. out of the classroom for the very first time, ever.

46. Despite the surveillance camera system being able to visually and audibly pick up on conversations and activity at the door of the classroom, there is no video footage of Ron the Principal returning P.K. to the classroom as the kids are lining up to go to recess at **10:00am**. Trinity Lutheran chose not to save and preserve that footage, despite having the ability to do so.

47. At approximately **10:15am**, Tracy the Director returns to campus. Upon arrival, she is told by Trinity Lutheran staff that P.K. had been thrown out of the classroom and Ron the Principal had been called over to deal with it. This was the only time P.K. had ever been sent to the front office.

ON MARCH 24th, 2021, TRACY THE DIRECTOR WATCHED THE VIDEO FOOTAGE OF THE TRINITY LUTHERAN TEACHER SCREAMING AT, BELITTLING, AND RIDICULING P.K., SMACKING THE PENCIL OUT OF P.K.'S HAND, SHOVING THE TEST AT P.K., AND THROWING P.K. OUT OF THE CLASSROOM

48. At some point on the day of the March 24th Meltdown, Tracy the Director watches the surveillance footage of the Trinity Lutheran Teacher screaming at, belittling, and ridiculing P.K., smacking the pencil out of P.K.'s hand, shoving the test at P.K., and throwing P.K. out of the classroom.

Q. So that morning, on March 24, 2021, you watched what happened while you were gone on the video footage?

A. I'm not going to give a time that day. I did go and look at it that day. I looked at that time, at the 9:40 when she threw her to the office, out of the room. I had been told she had -- the words were "they threw her out of the room" and I need to see if she threw her out of the room or what happened. I did watch that video from 9:40 to 9 -- I mean, yeah, 9:40 to 10, when she went to recess. I watched that -- that video at that point. And I -- I saw that she was very upset, yes.

Q. So it's your testimony sitting her today, you're telling the ladies and gentlemen of the jury that upon your return to Trinity, the school, at approximately 10:15 a.m., once being notified that there was a situation involving a little four-year-old [P.K.] communicated to you by Molly, you went and talked to Ron, you sat down and actually watched the footage from that morning up until the time that the kids went to recess, correct?

A. Correct.⁸

(Deposition Testimony of Tracy Rabb, Director of Trinity Lutheran)

49. According to Tracy the Director, the Trinity Lutheran Teacher's conduct was enough to issue a write-up documenting the violations of the law on the use of prohibited punishments – which she did, *but not until the next day* on Thursday, March 25th, 2021.

50. Yet, after watching the camera footage from 9:41am through 10:00am, showing the beginning stages of the March 24th Meltdown where the Trinity Lutheran Teacher violates the law on punishment, **Tracy the Director:**

Did NOT drop-in on the classroom.

Did NOT check on P.K.

⁸ Deposition of Tracy Rabb, Director of Trinity Lutheran: Page 158, L9 through P159, L16.

Did NOT check on the Trinity Lutheran Teacher.

Did NOT notify P.K.'s parents of the screaming, belittling, ridiculing, smacking, or shoving that P.K. was subjected to.

Did NOT watch the live feed of the camera footage.

51. At **10:37am**, P.K. and the rest of the class returned from outside recess.

52. Had Tracy the Director taken any steps to supervise the Trinity Lutheran Teacher – or check in on P.K. – **this is what she would have seen:**

***** PARTIAL VIDEO FOOTAGE FROM THE MORNING OF MARCH 24th, 2021 ***
FROM 10:37:35am through 11:58:45am**

**(Video footage from 9:58:27am through 10:37:35am, 10:42:00am through 11:22:00am,
and 11:43:16am through 11:48:25am is missing – Trinity Lutheran chose not to save and preserve it)**

53. At **10:37am**, P.K. and the rest of her class returns from outdoor recess. Tracy the Director is back on campus by now. Surveillance video footage captures the Trinity Lutheran Teacher as she continues the unraveling of her mental and emotional state – screaming at children *in the hallway* and aggressively yanking jackets off kids before tossing them to the side.

54. Before the classroom door has time to close, the Trinity Lutheran Teacher is screaming, yelling, belittling, and ridiculing P.K. while isolating her from the rest of the class during a coloring activity:

**“No [P.K.]! Go to your seat! NOW!
You have noooooooooo privileges!
Go sit in the back.
You do not get to do any...anyyyything anyone else gets to do!
You get to sit in the back by yourself because, you suck!
Sit!”**

“That is your new desk. Your neewwwwww place to be.”

55. P.K. sits alone in the back corner of the room for the remainder of the coloring activity through 10:42am. **Surveillance video footage from 10:42am through 11:22am is missing** – again, because Trinity Lutheran chose not to save and preserve it, despite having the ability to do so.

56. At **11:22am**, video footage begins with the Trinity Lutheran Teacher in mid-scream toward the children, yelling “**... you were not born in a barn!!**”

57. The Trinity Lutheran Teacher turns her attention toward P.K. again, but has difficulty talking because she is **hiccupping** loud enough for the surveillance camera to pick up the sound:

“Whha... **hiccup...aatt?”**

“Okay, [P.K.]! I’m still busy! Hushhh!

You are so annoying. Can you ever just be quiet? I don’t like you at all!”

58. At **11:28am**, the Trinity Lutheran Teacher’s fragile mental and emotional state is approaching an all-out meltdown. She jumps out of her chair and in between repeated hiccups, starts yelling, belittling, and ridiculing P.K. again – this time by scaring her, and the classroom, into believing that the police were coming to get P.K.:

“Guess what? I’m going to call the police.

And you’re going to go to jail. Yea!

You need to get locked up and go far away from your family and from all of your friends and you need to go to jail.”

“You need to go to jail. You are... **hiccup... you are so bad.”**

59. The Trinity Lutheran Teacher picks up her personal cell phone and pretends to dial 911 as P.K. and the class watch and listen in fear:

“Hi. Hi yes, my name is [Trinity Lutheran Teacher]. I am a teacher here at Trinity Lutheran. Will you come and please pick up a little girl by the name of [P.K.]?”

She needs to go in a cop car and go to jail because she is not a good person, and she doesn’t listen to anything.

So, she needs to go and be taken away from her mommy and her daddy because she does not listen.”

60. At this point, P.K. can be heard whimpering in the most heartbreaking tone. The other kids in the classroom are frozen with fear. One little girl put her hands over her ears trying to block out hearing the things the Trinity Lutheran Teacher was saying into her cell phone.

61. One of the kids in the class can be heard trembling, saying, “I’m scared.” The Trinity Lutheran Teacher turns her attention to P.K., yelling:

**“Okay?
I’ll call and tell her mommy and daddy?
Okay.
Oh ... you’re...
Her mommy and daddy said to take her?”**

**“Oh! Guess what?
Your mommy and daddy are so tired of how you act that
they don’t want you at home either.
They don’t want you. They want you at... they want you to go to jail, too
because you don’t listen!”**

62. The Trinity Lutheran Teacher pretends to now be talking to P.K.’s parents directly. P.K. cries sound more terrified. **“I want my mommy and daddy,”** P.K. begs as tears stream down her face.

**“Okay well this is your mommy right here!
Oh, [P.K.] is crying right now because she says she wants her mommy and daddy.**

**Your mom says, knock it off!
That you’re going to go to jail because you don’t listen.**

Too bad. So sad.

Okay, thank you so much we’ll see [P.K.] in a month. Okay bye bye!”

63. P.K.'s cries get louder and more frantic as she is overwhelmed with fear. She is standing in front of the Trinity Lutheran Teacher's desk, directly in the path of the classroom door that has a glass viewing window in it.

"Okay [P.K.] guess what? I guess we're going to have to pack up all of your stuff and when the cops get you, they're going to take you to the jail.

And you're going to be all by yourself!"

64. P.K.'s frantic cries for help continue as one of the kids in her class joins in on the taunting, adding fuel to the Trinity Lutheran Teacher's Meltdown:

"And you're gonna get locked in the dungeon!" the student yells.

65. The Trinity Lutheran Teacher encourages this taunting by adding:

**"You're going to be locked in the dungeon and there is nothing there.
And you're not going to talk to your mommy and daddy, no fun.
Go pick up your stuff so when the cops get here, they can come get you!"**

66. P.K. is begging for her mommy and daddy. The Trinity Lutheran Teacher continues:

**"Your mommy and daddy are not at jail. They are not at jail.
You won't ever see them. You'll be at the jail.
Cry about it.**

**And guess what?
Shhhhhh.... Guess what in jail?**

You think there are a bunch of little kids like your age in jail?

NO! Guess who they all are?

They're big grown-up scary people in jail!

And you're going to be the only teeny tiny little baby in the whole jail!"

67. The entire class falls silent, still, and terrified. P.K. is begging for her mommy and daddy.

"Mommy and daddy are not going to help you because, guess what?"

They want you to go. They don't want you at home.

Momma and daddy, they're gone! They're gone and you're going to jail."

68. Then, suddenly, the Trinity Lutheran Teacher breaks. She has reached the all-out mental and emotional Meltdown she warned everyone was coming. The Trinity Lutheran Teacher jumps out of her chair and rushes at P.K.:



The Trinity Lutheran Teacher grabs P.K., pushes her to the ground, picks up P.K.'s pencil case, and shoves the pencil case into P.K.'s body.



The Trinity Lutheran Teacher then yanks P.K. off the ground and drags her toward the front door.

She slams P.K. into the cubby wall so hard that a loud and startling thud can be heard.





69. A closer look at this specific video clip reveals that on *three different occasions*, a Trinity Lutheran employee is seen through the glass viewing window of the door, walking and standing just outside the classroom as both the Trinity Lutheran Teacher and P.K. scream.

70. **No one from Trinity Lutheran intervenes. No one saves P.K.**

At **11:30:32am**, a person approaches the classroom door and stands just outside as P.K. screams.

At **11:33:00am**, again, someone is seen approaching the door just outside the classroom as P.K. screams for her momma and dad and the Trinity Lutheran Teacher mocks her.

At **11:33:26am**, as the Trinity Lutheran Teacher is physically dragging and wrestling with P.K. after slamming her into the cubby wall, a Trinity Lutheran employee is seen walking past the classroom door window. They are just a few feet away from a hysterical P.K. and an irate Trinity Lutheran Teacher.

No one intervenes. **No one** saves P.K.



**IS THIS SO COMMON AT TRINITY LUTHERAN THAT
NO ONE THINKS ANYTHING OF IT?**

Q. [P.K.] is screaming at the top of her lungs, being dragged to the front door. There is somebody that walks by twice and does nothing, correct?

A. They obviously did nothing.

Q. And that was a Trinity school employee, correct?

A. Yes.

Q. Is it so common at Trinity, the school, that kids scream at that level that [P.K.] did, what we've spent seeing on video, that no one thinks any of it?

A. Loud classrooms is not unusual, no. Screaming, that is unusual. Yes. If I had heard screaming, I would have gone into the classroom. I can't imagine any of my workers would not if they heard it.

Q. But yet, we saw somebody walk by twice and did nothing.

A. I understand.⁹

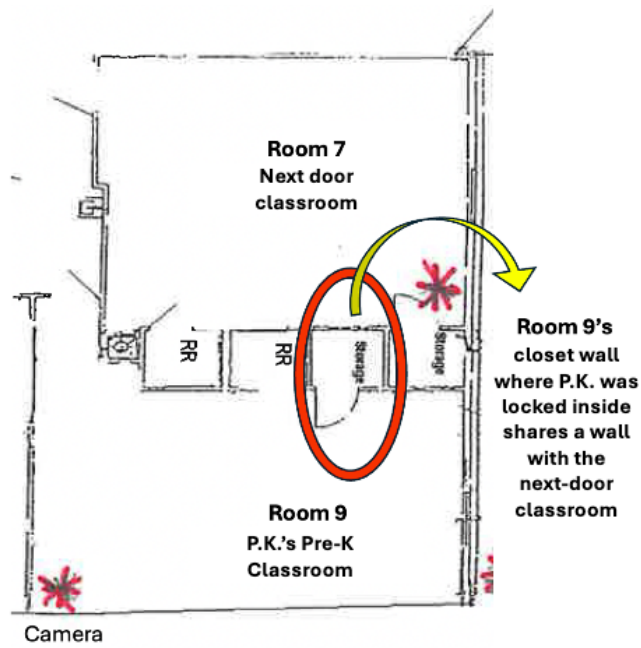
(Deposition Testimony of Tracy Rabb, Director of Trinity Lutheran)

71. During and independent investigation, the Texas Department of Family and Protective Services learned that a nearby Trinity Lutheran staff member had noticed that the Trinity Lutheran Teacher was running behind on the daily schedule because she could hear her classroom still up and awake during what was supposed to be a scheduled naptime. How is it possible that no one have heard P.K.'s screams? How could no one have heard the Trinity Lutheran Teacher yelling? **The simple truth is – they did hear it. They just chose not to intervene.**

72. At **11:33:54am**, P.K. gets out of the Trinity Lutheran Teacher's grip. With her arms crossed and crying, she slowly walks to a table in the back of the classroom and sits down. The Trinity Lutheran Teacher follows her, stops at the closet door, and screams "**GET IN THERE!**"

73. P.K. gets up and walks into the closet as the door slams shut behind her. She is left alone in the closet with the lights off for approximately one minute. P.K. is hysterically crying. Her screams are so loud, they are picked up by the surveillance camera on the opposite side of the room. The closet P.K. was locked in shares a wall with another classroom. P.K. screams and cries the entire time. **No one intervenes. No one saves P.K.**

⁹ Deposition Testimony of Tracy Rabb, Director of Trinity Lutheran: Page 267, Lines 3-22.



74. By **11:35am**, another little girl in the class covers both her ears with her hands and arms in fear, keeping them there for *nearly four minutes* straight. The Trinity Lutheran Teacher goes back to the closet and opens the door to a hysterical P.K. The Trinity Lutheran Teacher bends down to get close to P.K.'s face, and screams:

**“Oh yea? Oh yea? Stop.
Stop that ugly face! I don’t know why you don’t do what I tell you to do!
I don’t know why. Why don’t you?”**

The sounds of struggling between the Trinity Lutheran Teacher and P.K. are loud enough to be picked up by the surveillance camera, but the closet door strategically blocks the view of the camera. P.K. is crying, asking for her mommy and daddy, but the Trinity Lutheran Teacher continues:

**“Oh, you need your mommy and daddy?
They’re going to make you do what you’re supposed to do?
Are they going to make you do what you’re supposed to?
You think so? You think so?
Do you think your mommy and daddy are going to help you do what you’re supposed to? So why don’t you do any of it?”**

Because you don't like to listen, and you like to distract everybody and be rude and . . ."

The Trinity Lutheran Teacher shoves her hand into P.K.'s face. The sound of a **slap** can be heard on camera. Later, during her forensic interview, P.K. made an outcry of having been hit on her hand, face, and forearm – aligning with the sounds of physical struggle that can be heard coming from behind the open closet door.

". . . STOP! STOP! Knock it off because look at me right now. I am so done with *this* attitude."

The Trinity Lutheran Teacher shoves her finger into P.K.'s chest. Her voice lowers as she leans into P.K.'s face: **"You are so bad, nobody likes you, nobody!"**

75. One of the kids walks up to the Trinity Lutheran Teacher and P.K. as if to intervene. The Trinity Lutheran Teacher yells **"GO!"** at the kid, who then rushes to get out of the way. When P.K. tries to move, the Trinity Lutheran Teacher blocks her by grabbing her arm and shoving her back behind the door:

"Not you. NOT YOU!

**You think you're going to disrespect me? And get in my way?
And try to tell me what you're not going to do?
Girl. You got another thing coming!**

**Look at me! I'm the boss! Me!
CAPEESH?
CAPEESH?
Now go SIT down!"**

76. P.K. breaks free and sits down in the back of the classroom, continuing to cry. The Trinity Lutheran Teacher did not stop there. Shortly after, she calls P.K. over to her desk to continue to belittle her, scream at her, and scare her:

"What are you still whining and crying about?"

Hey, guess what? Come here.

Your mommy and your dada do not want you. They don't want you.

Do you think they want you and your whiny cry baby?

No, they don't. Guess what? Nope. They don't.

They don't want to be around you like this. It's annoying. And bratty.

You cause so many problems in this classroom. You are the worst.

You don't listen. You don't even try to listen. You don't try to be good.

You don't try to be sweet. You don't try to be helpful.

Like any of these other girls. Cause all those girls are good girls.

[Redacted name of female student] is a good girl, *she's* a smart girl.

She helps people. She's smart, she's funny, she has friends.

You're not. You're not smart.

You don't have friends because you're rude and you don't listen.

And every single kid in here does not like you.

They do not want to be around you because you are annoying.

Because you annoy every person that's around."

77. The Trinity Lutheran Teacher continues this episode of belittling and ridiculing P.K. at her desk. The surveillance camera picks up on the audio – however, the **surveillance video footage stops at 11:43:16am** – right in the *middle of P.K. standing at the Trinity Lutheran Teacher's desk as she is being scolded, up close and in her face.*

IF THIS IS WHAT THEY CHOSE TO SAVE, IMAGINE WHAT THEY DELETED!

Video footage from 11:43:16am through 11:48:25am – over five minutes – is missing. Trinity Lutheran chose not to save and preserve it, despite having the ability to do so.

78. At **11:48am**, the surveillance video footage Trinity Lutheran chose to save picks back up. P.K. is no longer at the Trinity Lutheran Teacher's desk. Rather, the kids are gathering their lunches from a lunch tray that was brought into the classroom by another Trinity Lutheran staff member. The identity of that staff member is unknown and the footage that would identify who it was that came into the classroom is missing – because Trinity Lutheran chose not to save and preserve it, despite having the ability to do so.

79. Trinity Lutheran Teacher stands with her legs intertwined and locked as though she is holding her pee. She abruptly stands up straight, grabs her crotch, and rushes toward the bathroom. As she turns into the bathroom, she encounters a little boy. The Trinity Lutheran Teacher grabs him by the arm, yanks him out of the bathroom, and aggressively shoves him in the back before slamming the door shut, leaving the kids without any adult supervision.

80. At the time of Tracy the Director's initial reporting of the March 24th Meltdown to the state licensing division, she reported there was surveillance video footage that showed the Teacher shutting herself in the bathroom, leaving the kids in the classroom unsupervised, on *three separate occasions* throughout the day. Yet, the surveillance video footage that exists *today* only reflects *one* of those three separate times the Teacher was seen shutting herself in the bathroom. **Tracy the Director had the surveillance video footage, used it in her reporting of the March 24th Meltdown, and specifically chose not to save and preserve it.**

81. At **11:50am** the same boy the Trinity Lutheran Teacher yanked and shoved out of the bathroom is walking around the classroom. The little boy is picking a small piece of paper from the floor when the Trinity Lutheran Teacher grabs his left arm, yanks him in front of her, and aggressively smacks at the underneath of his chin hard enough to force his head to come back up – *twice*.

82. As the little boy goes back to his seat, the Trinity Lutheran Teacher turns her wrath on the rest of the kids in the class:

“See. That’s what I mean by... that’s what I mean by... I tell you stuff to do, and in your own brains, you have your own ideas that tell you stuff to do. But what’s more important? Listening to YOUR ideas? Or listening to MY ideas?”

83. As though this is not the first time this class of 4-year-old kids have heard this kind of rant from their teacher, **“Your ideas!”** the class responds *in unison*.

84. The Trinity Lutheran Teacher’s speech is slurred, and she is having difficulty putting together intelligible sentences as she continues to yell at the class:

“MINE!

**When you get home... you can listen to all of your ideas, all you want.
If you think in your head, ‘hey... I want to put bubbles ... all ... over my bathtub,’
I don’t care. I don’t care.
But... but... if at school, I say ‘hey, take your food to your seat and wait’ ...
That’s what I mean.**

**I don’t mean ... shhhh.... I don’t mean, ‘hey pick up your food and start walking
around, start talking to other people, messing around, not sitting the right way
in our chairs, jackin’ off, smiling around, goofing around...
Just like [redacted name of other male student]’s doing right now!”**

85. By **11:52am**, the Trinity Lutheran Teacher sits down at her desk and the kids say their prayers before eating their lunch.

86. Video footage from **11:58:45am through the remainder of the day is missing** – Trinity Lutheran chose not to save and preserve it, despite having the ability to do so.

IF THIS IS WHAT THEY CHOSE TO SAVE, IMAGINE WHAT THEY DELETED!

87. The final surveillance video clip that Trinity Lutheran chose to save and preserve, ends at **11:58:45am**. The Trinity Lutheran Teacher finished her shift at **1:30pm**. She left the classroom and transitioned the kids into the care of a Trinity Lutheran aide.

88. **No video footage exists for the final hour and a half** that the Trinity Lutheran Teacher was in the classroom with P.K. and the other children. Trinity Lutheran chose not to save and preserve it, despite having the ability to do so.

89. Following the completion of her shift at **1:30pm**, the Trinity Lutheran Teacher gathers her things to leave. Before she leaves Trinity Lutheran, she meets with Tracy the Director in Tracy's office and starts complaining about P.K. Tracy the Director suggests that the Trinity Lutheran Teacher call P.K.'s mother to discuss the day.

90. At **2:16pm**, the Trinity Lutheran Teacher uses her personal cell phone to call Mellissa Killingsworth, leaving a **two-minute-long voicemail**. Tracy the Director chose not to sit in the office while the Trinity Lutheran Teacher makes this call to P.K.'s mother.

91. Trinity Lutheran has no explanation for what the Trinity Lutheran Teacher was doing **between 1:30pm and 2:16pm**.

92. Tracy the Director was with the Trinity Lutheran Teacher *immediately before* this voicemail, and *immediately after* this voicemail, yet she claims she didn't notice anything 'off' about the Trinity Lutheran Teacher's demeanor – **a tale that is hard to believe after you've listened to the voicemail**. During the two-minute voicemail, the Trinity Lutheran Teacher complains about P.K. through slurred speech:

**"Hey, Mel. This is [Teacher], up at Trinity Lutheran. Um, we've had some issues with [P.K.]. They have proc...uhm... precedingly (sic) getting worse... and... Kind of at my wits end with her.
I don't know if there are ... suggestions ... or anything.
Because she does not listen. She is so disrespectful. She is rude.
And it is really causing lots of problem in my class.
Uhm... between hord (sic)... her... accessories ... and the plenty of things she brings into my room, into my cubbies, to distress everyone, there's other students that even go as far to say as 'Please don't let [P.K.] by me. All she does is annoy me. All she does is sing at me.' It is becoming such a large problem in my classroom. Okay.
I like a nice ... and harmonized classroom. And for the most part, they are.
Now, [P.K.], is throwing a wrench in our system.
We have only a few more months to get ready for kindergarten, and [P.K.] is so far from that. If you could give me a call back, my number is [redacted personal cell phone number]. Thank you."**

93. Tracy the Director later agrees – the Trinity Lutheran Teacher sounds ‘off,’ ‘impaired,’ and goes well beyond using the wrong tone and words with a parent.

Q. Listening to the voicemail that your teacher left for Mrs. Killingsworth on March 24th, 2021, after you instructed her to – based on who you knew [Trinity Lutheran Teacher] to be, does this sound like how she would normally sound?

A. No.

Q. It sounds off to you, doesn’t it?

A. Yes.

Q. Doesn’t it sound like she’s impaired?

A. Yes.

Q. And this is far beyond just a teacher using the wrong tone or the wrong words, correct?

A. Correct.¹⁰

(Deposition Testimony of Tracy Rabb, Director of Trinity Lutheran)

94. Yet, Tracy the Director still denies that on March 24th, 2021, there was anything ‘off’ about the Trinity Lutheran Teacher either before or after leaving the two-minute-long voicemail.

95. According to Tracy the Director, the Trinity Lutheran Teacher left the 2:16pm voicemail and headed straight for the door to leave for the day. On her way out, the Trinity Lutheran Teacher told Tracy the Director that she had to leave a voicemail and **“It wasn’t nice.”**

96. Tracy the Director shrugged off the Trinity Lutheran Teacher’s comment. Despite begin told a voicemail was left for a parent that “wasn’t nice,” she didn’t ask any questions, check on P.K., or review the rest of the video footage from the March 24th Meltdown.

Q. And you never asked [Trinity Lutheran Teacher] what she meant by “it wasn’t nice”? When she said, I had to leave a message for [P.K]’s mom,” did you?

A. I did not.

Q. Was it not concerning enough that one of the teachers you are required to supervise just told you she left a message for a parent that wasn’t nice? Was it not concerning enough for you to ask more questions?

A. I should have probably at that point asked more questions, but I did not.

¹⁰ Deposition of Tracy Rabb, Director of Trinity Lutheran: Page 203, Lines 8-20.

Q. All you did at that moment, on March 24, 2021, when [Trinity Lutheran Teacher] came back to you and said, “I left a message. It wasn’t nice.” All you said was, “Oh, wow.” And you just let [Trinity Lutheran Teacher] walk out the door, correct?

A. I did.

Q. And at that point, you still didn’t think about watching the cameras?

A. True.

Q. And at that point you still didn’t think about checking in on [P.K.]?

A. True.¹¹

(Deposition Testimony of Tracy Rabb, Director of Trinity Lutheran)

97. Mellissa Killingsworth received the voicemail a few minutes later and called the Trinity Lutheran Teacher right back. The Trinity Lutheran Teacher claimed she didn’t remember leaving a voicemail and denied ever saying anything bad about P.K. Mrs. Killingsworth picked up P.K. from Trinity Lutheran at **4:00pm**. When she arrived for pick up, Tracy the Director met her outside. The first thing Tracy the Director said was **“I heard there was a voicemail incident? She was told not to leave a voice mail. Was there a voicemail left?”** Mrs. Killingsworth told Tracy the Director that she called the Teacher right back but the Teacher seemed to not know about a voicemail and was told nothing happened during the day with P.K. Mrs. Killingsworth told Tracy the Director it was an odd conversation, but she assumed it was just a mistake or Justice the Teacher was confused.

98. By the time of that **4:00pm** conversation at pick-up, Tracy the Director had *already* seen the morning video footage from 9:41am through 10:00am, where the Trinity Lutheran Teacher yelled, screamed, ridiculed, and belittled P.K., smacking a pencil out of her hand and shoving a test at her, before throwing her out of the classroom – *but Tracy the Director chose not to tell Mrs. Killingsworth about what she had seen on the camera footage.*

¹¹ Deposition of Tracy Rabb, Director of Trinity Lutheran: Page 199, Line 25 through Page 201, Line 15.

99. Later that evening, Mellissa Killingsworth listens to the voicemail with her husband, Patrick Killingsworth, P.K.'s father. They both decide it is disturbing and to make sure Tracy the Director and Ron the Principal hear it. **The next day, on Thursday, March 25th, 2021**, Mrs. Killingsworth plays the voicemail for Tracy the Director *and* Ron the Principal – as documented by a timeline of events Trinity Lutheran made:

Thursday, 3/25

3:30 p.m. Mellissa Killingsworth brought in the voice message from [Teacher] for Mr. Fritsche and I to listen to. We apologized again.

* Name redacted for privacy *

100. Mrs. Killingsworth is reassured by Tracy the Director and Ron the Principal that they apologize for the voicemail and would look at the video footage from March 24th, 2021, to find out what happened in the classroom.

101. But at the time of *this* documented conversation on **Thursday, March 25th, 2021**, Tracy the Director and Ron the Principal knew that P.K. had been subjected to yelling, screaming, humiliating, ridiculing... *and so much more*.

THE EVENING OF THE MARCH 24th MELTDOWN

5:30pm, Wednesday, March 24th, 2021

THREE HOURS after her shift, the Trinity Lutheran Teacher returns.



She almost runs a parent off the road.



She is impaired, unable to walk, and out-of-sorts.



Her keys are taken away from her by Tracy the Director.



She has to be picked up and driven home.

102. At **5:30pm**, on Wednesday, March 24th, 2021 – *just 3 hours after leaving work* – the Trinity Lutheran Teacher returns to pick up her 5-year-old daughter from the main Trinity Lutheran school building.

103. A parent reports to Tracy the Director that someone in a red jeep almost ran her off the road. Tracy immediately recognizes the red jeep as the Trinity Lutheran Teacher's car and heads over to check on her.

104. The Trinity Lutheran Teacher is sitting in the driver's seat, fumbling with her keys. According to Tracy the Director, she appears to be **"impaired and off," "not acting herself," unable to walk,"** and **"unstable."** Believing that the Trinity Lutheran Teacher was *a danger to her own daughter and others on the road*, Tracy the Director takes the car keys, calls Ron the Principal, and helps the Trinity Lutheran Teacher walk into the preschool building, sitting her down in Tracy the Director's office. The Trinity Lutheran Teacher was so "out-of-it" that she could not comprehend basic questions. For example, when asked for her boyfriend's phone number, the Trinity Lutheran Teacher was giving *her own* cell phone number in response. As they awaited her ride, Tracy the Director and Ron the Principal were actively distracting the Teacher's daughter to keep her from seeing her mother in that state. Eventually, the Trinity Lutheran Teacher was picked up and driven home – leaving her red jeep in the Trinity Lutheran preschool parking lot overnight.

105. What did Tracy the Director and Ron the Principal do after the Trinity Lutheran Teacher was picked up? – **Nothing.** Tracy the Director and Ron the Principal went on with their evening as though nothing significant had happened. As though they didn't have a teacher return to campus in an impaired state just three hours after departing her shift. As though they didn't know that same teacher had yelled, screamed, belittled, and humiliated P.K. that day. As though they had no reason to believe that the meltdown they had been warned about had finally happened on their watch. **For Trinity Lutheran, it was business as usual.**

THE NEXT MORNING – THURSDAY, MARCH 25th, 2021

14 Hours After the Trinity Lutheran Teacher Had to Be Picked Up – She is Called *Back* to Work

106. Thursday, March 25th, 2021, the morning after the Meltdown, Tracy the Director calls the Trinity Lutheran Teacher to see if she is going to *come into work that day*.

Q. So based on this testimony, you asked [the Trinity Lutheran Teacher] if she is okay to come in to work, correct?

A. Yes.

Q. A teacher who approximately 14 hours before was so out of sorts, that you refused to let her driver her own kid home, correct?

A. Correct.

Q. The same teacher, who 14 hours before, you had to lean over and take her keys, correct?

A. Correct.

Q. The same teacher, who 14 hours before, you said, wasn't right, needed help walking, wasn't making sense when she talked, was fumbling with things, was a danger to the road. That same teacher, correct?

A. Correct.¹²

(Deposition Testimony of Tracy Rabb, Director of Trinity Lutheran)

107. During this conversation, the Trinity Lutheran Teacher tells Tracy the Director that she has no recollection of the day before (Wednesday, March 24th, 2021). What does Tracy the Director do with that alarming information? – She ignores the red flags, allows the Trinity Lutheran Teacher to come back, and supposedly doesn't consider watching any of the video footage from March 24th, 2021.

Q. Sitting here today, you can see that not being able to remember the day before was a red flag that [the Trinity Lutheran Teacher] should not have been allowed to be around children on March 25th, 2021, correct?

A. Correct.

Q. And [the Trinity Lutheran Teacher] not being able to remember the day before, that didn't cause you to think you should go watch the cameras?

A. No. That that point, no, sir.¹³

(Deposition Testimony of Tracy Rabb, Director of Trinity Lutheran)

¹² Deposition Testimony of Tracy Rabb, Director of Trinity Lutheran: Page 227, Line 24 through Page 228, Line 11.

¹³ Deposition Testimony of Tracy Rabb, Director of Trinity Lutheran: Page 228, Line 23 through Page 229, Line 6.

108. Tracy the Director had the power to decide that the Trinity Lutheran Teacher should not be allowed to come back to work. She had the power to tell her to stay home, take some time off, and figure out what is going on. But on that morning, Tracy the Director handled things the way she always has – ***by pretending to not see and hear the clear, loud, and direct alarms going off right in front of her.*** Trinity Lutheran put its staffing issues over the safety and wellbeing of the children they were supposed to care for.

109. At **7:45am** that morning, the Trinity Lutheran Teacher arrived for work. She *immediately* started complaining about P.K. – *she wanted P.K. out of her classroom.* She was **irate, angry, yelling, and storming down the halls** of the preschool. According to Tracy the Director, the Trinity Lutheran Teacher was **“mad and she was furious,”** with Tracy the Director because Tracy **“wouldn’t take [P.K.] out of the classroom.”¹⁴**

110. The Trinity Lutheran Teacher is demanding that P.K. be taken out of her classroom... but is also telling Tracy the Director that she does not remember the prior day. Any reasonable preschool Director would consider this such a red flag that they would take action to figure out the complete story of what happened in that classroom the day before. Yet again, Tracy the Director handles things the way she always has – ***by pretending to not see and hear the clear, loud, and direct alarms going off in front of her.***

Q. And this red flag didn't cause you to think about how [the Trinity Lutheran Teacher] had also complained about [P.K.], correct?

A. Correct.

Q. And this red flag didn't even cause you at any point to now think, huh, maybe I should go watch the cameras?

A. Not at that point. No, sir.

Q. And [the Trinity Lutheran Teacher] bringing up [P.K.] and asking for her to be taken out of the class, that didn't cause you to inquire more into why it is that [the Trinity Lutheran Teacher] is asking for [P.K.] to be removed?

¹⁴ Deposition Testimony of Tracy Rabb, Director of Trinity Lutheran: Page 232, Line 24 through Page 233, Line 9.

A. I didn't.¹⁵

(Deposition Testimony of Tracy Rabb, Director of Trinity Lutheran)

111. The altercation got so intense that Tracy the Director had to physically chase the Trinity Lutheran Teacher down the hall as she was angrily storming through the building to take her daughter and leave. Tracy the Director brought the Trinity Lutheran Teacher to Ron the Principal's office where they had to calm her down.

Thursday, 3/25

7:45 a.m. [Teacher] arrives and seems out of sorts. Becomes very angry with me regarding [P.K.] being in her classroom.
Storms down the hall and goes to get [Minor].
I catch her at the door and plead with her not to take [Minor] in the car while she is so upset.
Ron Fritsche and I visit with her and calm her down.

** Name redacted for privacy **

112. Any reasonable school Principal would consider this such a red flag that they would not allow that teacher to be back in the same classroom, with the same child that they spent all morning angry, irate, and furious about. Any reasonable Principal would consider this such a red flag that they would take action to figure out the complete story of what happened in that classroom the day before. Yet again, Ron the Principal handles things the way he always has – **by pretending to not see or hear the clear, loud, and direct alarms going off in front of him.**

113. At **9:00am**, Ron the Principal decides to put the Trinity Lutheran Teacher back in the classroom, alone, with P.K. and the other children. Why? – because they didn't have the staff available and were waiting for a substitute aide to come in to cover the Trinity Lutheran Teacher's class. The Trinity Lutheran Teacher remained in the classroom **until 10:00am** when Trinity Lutheran finally got a substitute to take over.

¹⁵ Deposition Testimony of Tracy Rabb, Director of Trinity Lutheran: Page 234, Lines 4-18.

114. The video footage from the entire day of March 25th, 2021, is missing. Trinity Lutheran chose not to save and preserve it, despite having the ability to do so.

**TRINITY LUTHERAN KNEW P.K. WAS SUBJECTED TO
PROHIBITED PUNISHMENTS IN DIRECT VIOLATION OF THE LAW
– BUT THEY CHOSE NOT TO TELL P.K.’S PARENTS**

115. Parents have a right to know when their child has been subjected to belittling, rejection, humiliation, and all other prohibited punishments while at preschool.

116. Trinity Lutheran chose not to notify Patrick and Mellissa Killingsworth about what they knew the Trinity Lutheran Teacher had done to 4-year-old P.K. – conduct Tracy the Director had seen on camera on March 24th, 2021, and knew was in direct violation of the Texas laws for childcare. In fact, five days went by before Trinity Lutheran told Mr. and Mrs. Killingsworth anything.

117. On the **morning of Thursday, March 25th, 2021**, Tracy the Director and Ron the Principal **write up a “Letter of Reprimand”** for the Trinity Lutheran Teacher’s **treatment of P.K. between 9:40am and 10:00am, prior to kicking her out of the classroom, on Wednesday, March 24th, 2021**. The “Letter of Reprimand” was based on the video footage Tracy the Director *had already seen* the day prior, on Wednesday, March 24th, 2021.

118. The “Letter of Reprimand” states that the Trinity Lutheran Teacher **“was using harsh language with [P.K.] prior to sending her out of the classroom to the office,”** and specifically cites the Texas Minimum Standard for Child Care statute §746.2805 on **the use of “Prohibited Punishments – humiliating, rejecting, yelling,”** as the rationale, noting that the Trinity Lutheran Teacher **“did not recall the incident.”** Ron the Principal signed the “Letter of Reprimand,” that same morning on Thursday, March 25th, 2021.

119. At **10:00am**, after the substitute teacher arrived to take over the classroom, Tracy the Director and Ron the Principal discuss the “Letter of Reprimand” and put the Trinity Lutheran Teacher on administrative leave.

120. **Five and a half hours later, at 3:30pm**, Mellissa Killingsworth arrives and plays the disturbing voicemail she had received from the Trinity Lutheran Teacher at 2:16pm the day before.

10:00 a.m. Her sub comes in.

Ron Fritsche and I meet with her and put her on an administrative leave until she can see her doctor and get some answers.

She was encouraged to call Dr. [Redacted] and share with him the events of the week.

3:30 p.m. Mellissa Killingsworth brought in the voice message from [Teacher] for Mr. Fritsche and I to listen to. We apologized again.

** Name redacted for privacy **

121. Rather than tell Mellissa Killingsworth what they knew had happened in that classroom – what they had seen on camera and had written the Trinity Lutheran Teacher up and placed her on administrative leave for – Tracy the Director and Ron the Principal chose to keep what happened to P.K. a secret. **They chose to not tell Mellissa Killingsworth what they already knew happened to P.K. on March 24th, 2021.**

Q. Okay. And so sitting here today, it's your testimony that this -- all of this information you knew as of March 25th, 2021, when you would have signed this document?

A. Yes.

Q. Absolutely you knew this, right?

A. It was --

Q. You had to have known the information that was on here?

A. Yes, or I -- yes, or it was conveyed to me. Yes. Yes.¹⁶

Q. At no point on March 25th, 2021, did you notify [P.K.]'s parents that something as significant as being -- having their daughter, little four-year-

¹⁶ Deposition Testimony of Ronald Fritsche, Principal of Trinity Lutheran: Page 158, Line 15 through Page 159, Line 11.

old, humiliated, rejected, yelling at, using harsh language against, and having their teacher put on administrative leave and doesn't recall the day before, you never notified them on March 25th, 2021; isn't that true?

A. I did not notify them.¹⁷

(Deposition Testimony of Ron Fritsche, Principal of Trinity Lutheran)

122. Despite knowing that a **parent has an absolute right to know** when their kid has been subjected to prohibited punishments, they chose *not* to tell Mellissa Killingsworth:

Q. And you would agree that a parent **has an absolute right to know when their child was subjected to being humiliated, rejected, yelled at, having harsh language used against them, you absolutely agree that a parent has a right to know that information?**

A. Yes.

Q. And despite understanding and knowing that a parent has a right to know that information, you did not tell them for four (sic) days? You understand that that is the truth in this matter?

A. Yes.¹⁸

(Deposition Testimony of Ron Fritsche, Principal of Trinity Lutheran)

123. **Tracy the Director and Ron the Principal made that *same* choice every day thereafter until Monday, March 29th, 2021 – five days after** knowing what they had seen on camera, what they had issued a “Letter of Reprimand” for, and what they had placed their Trinity Lutheran Teacher on administrative leave for.



Thursday, March 25th, 2021 – They chose not to tell Patrick and Mellissa Killingsworth.



Friday, March 26th, 2021 – They chose not to tell Patrick and Mellissa Killingsworth.



Saturday, March 27th, 2021 – They chose not to tell Patrick and Mellissa Killingsworth.

¹⁷ Deposition Testimony of Ronald Fritsche, Principal of Trinity Lutheran: Page 162, Lines 12-20.

¹⁸ Deposition Testimony of Ronald Fritsche, Principal of Trinity Lutheran: Page 164, Lines 7-17.



Sunday, March 28th, 2021 – They chose not to tell Patrick and Mellissa Killingsworth.

FIVE DAYS LATER – MONDAY, MARCH 29th, 2021

124. It was **not until Monday, March 29th, 2021** – five days after the March 24th Meltdown – that Trinity Lutheran finally decided to watch the rest of the video footage of March 24th, 2021.

125. At **7:30am**, Tracy the Director revisits the camera footage of the March 24th Meltdown. She shows video footage to Ron the Principal, and together they realize they are required to make a report of violations of the law to the state of Texas.

126. By **8:30am**, Tracy the Director and Ron the Principal report to Trinity Lutheran’s Head Pastor Allan Eckert about the March 24th Meltdown, what was seen on camera, and that Trinity Lutheran was required by law to make a report to the state of Texas.

127. At **10:45am**, Ron the Principal calls the Trinity Lutheran Teacher informing her that Trinity Lutheran was required by law to report what was seen on the video footage during the March 24th Meltdown, five days earlier.

128. When the Trinity Lutheran Teacher asked what that meant for *her*, Ron the Principal told her, **“We don’t know.”** Despite everything they knew, **Trinity Lutheran did not fire the Teacher.**

At approximately 10:45 am. On Monday, March 29, 2021, Ron Fritsche and Tracy Rabb placed a phone call to [Teacher], informing her that we had made a report to licensing regarding incidents that we had observed on the cameras in her classroom on 3/24/21. We indicated that she had broken standard and that we were required by law to report them. She asked what that meant for her and she was told that we did not know. She indicated that maybe it would be better for her to go ahead and resign her position here at Trinity. Her resignation was accepted. She was told that she would need to put that in writing to us either in a letter or an email. She told us that she would like to come and get her personal belongings. We told her to let us know when she would be coming as we did not want her to go into the classroom with the children present as it may confuse or upset the children.

** Name redacted for privacy **

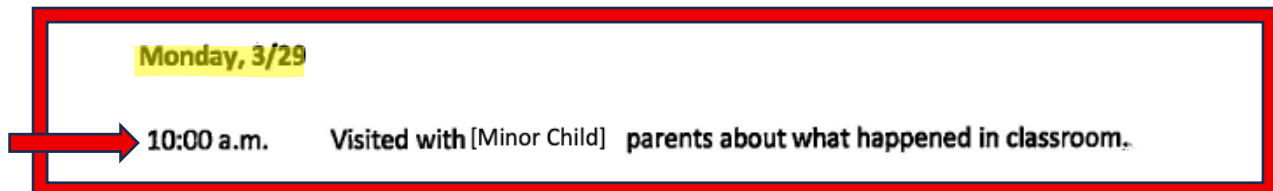
129. Ron the Principal *admits* that at the time of his phone call to the Trinity Lutheran Teacher at 10:45am, on Monday, March 29th, 2021, he had not yet made the decision to fire her – claiming that at the time, he had only seen the first video clip from 9:40am when the Trinity Lutheran Teacher threw P.K. out of the classroom.

- Q. That decision wasn't made based off of what you saw on this video footage, what your director saw on all of the video footage that she observed, and the fact that licensing was to be reported. You still hadn't made the decision to terminate that caregiver based on everything that you knew even at this moment when you talked to her, correct?
- A. I don't remember what was going on in my mind. Again, at this point, I'd only seen the one video. I don't -- so, yeah. I -- I'll have to say yes. I wasn't 100 percent sure that term -- at this point in time, termination was automatic.¹⁹

(Deposition Testimony of Ron Fritsche, Principal of Trinity Lutheran)

. . . ONE PROBLEM WITH THAT STORY – IT IS A LIE.

130. According to Trinity Lutheran's own documentation, Ron the Principal made a 10:00am phone call to the parents of the male student that was mistreated on March 24th, 2021 – the kid that was yanked out of the bathroom at 11:48am and smacked on the chin twice at 11:50am, by the Trinity Lutheran Teacher.



131. **The truth is** – Ron the Principal spoke with the parents of t* *Name redacted for privacy* *s abused by the Trinity Lutheran Teacher at 10:00am, as documented, **45 MINUTES BEFORE** he called the Trinity Lutheran Teacher at 10:45am, told her he doesn't know what this means for her, and instead of firing her, accepted her voluntary resignation.

¹⁹ Deposition Testimony of Ronald Fritsche, Principal of Trinity Lutheran: Page 173, Lines 8-19.

132. Realizing the Trinity Lutheran documentation contradicts his statements, Ron the Principal changes his mind about how much he needed to see to make the decision that the Trinity Lutheran Teacher needed to be fired:

Q. How many videos did you have to see of [the Trinity Lutheran Teacher]'s conduct on March 24th, 2021, to make the determination that she needed to be terminated immediately and never be around kids at your school that you are ultimately responsible for?

A. Probably one. Probably the first one.²⁰

(Deposition Testimony of Ron Fritsche, Principal of Trinity Lutheran)

133. By the time Ron the Principal called the Trinity Lutheran Teacher at **10:45am**, it is ***indisputable*** that *at the very least*, Trinity Lutheran:



KNEW about the prohibited punishments leading up to throwing P.K. out of the class



KNEW about the “harsh,” “not nice,” voicemail left for Mellissa Killingsworth



KNEW about their Teacher showing up at Trinity Lutheran impaired and unable to walk and talk, forcing the need for her keys to be taken away and for someone to pick her up



KNEW about their Teacher not remembering the entire day of March 24th



KNEW about their Teacher coming to work on March 25th, irate, angry, furious, and demanding P.K. be taken out of her classroom



KNEW about the other male student being yanked out of the bathroom by their Teacher



KNEW about the other male student being smacked in the chin twice by their Teacher



KNEW they were required by law to report their Teacher’s conduct



KNEW they had the access and ability to save and preserve ALL video footage from March 24th and March 25th, 2021 (*and chose not to do so*)

²⁰ Deposition Testimony of Ronald Fritsche, Principal of Trinity Lutheran: Page 176, Lines 2-7.

134. Trinity Lutheran eventually called Patrick and Mellissa Killingsworth on Monday, March 29th, 2021, and asked them to come in for a meeting. At **4:30pm**, Mr. and Mrs. Killingsworth met with Ron the Principal and Tracy the Director. During that meeting, ***Trinity Lutheran downplayed and minimized the severity of what happened during the March 24th Meltdown***, telling P.K.'s parents that based on video footage, the Trinity Lutheran Teacher “pulled on P.K.’s arm” and “said some things a teacher should never say to a child.” When Patrick and Mellissa Killingsworth asked to see the video footage, Trinity Lutheran *refused* – trying every excuse they could to avoid having to show P.K.’s parents what really happened to her.

TRINITY LUTHERAN CHERRY-PICKED THE VIDEO FOOTAGE TO SAVE & PRESERVE

LEAVING THE KILLINGSWORTH FAMILY IN THE DARK FOREVER

135. *After* seeing all the footage of the March 24th Meltdown, Trinity Lutheran cherry-picked what they wanted to save and what they wanted to delete forever. Trinity Lutheran made choices. Footage from chunks of the day were deleted. Footage of the Teacher returning to work impaired on March 24th was deleted. Footage from March 25th when the Teacher returned irate and yelling about P.K. was deleted. Trinity Lutheran even chose to not review and save *any* footage of the days *leading up to and preceding* the March 24th Meltdown.

136. Even more shockingly, **Trinity Lutheran’s Head Pastor Allan Eckert has *never* seen the video footage of what his Teacher did to P.K. in the preschool he is ultimately responsible for.** In fact, Head Pastor Allan Eckert – the leader of the congregation, the school, and all its members – has never even *asked* to see the video footage.

137. Trinity Lutheran cherry picked what they wanted to keep and what they wanted to delete. **Leaving the Killingsworth family in the dark forever.**

THE MARCH 24th MELTDOWN **NEVER** SHOULD HAVE HAPPENED

138. Trinity Lutheran is responsible for hiring qualified teachers, training them on how to do their job, and supervising them to ensure they are doing their job correctly. Trinity Lutheran failed to uphold the Texas Minimum Standards for Child Care and failed to act in the face of clear, loud, and direct alarms going off for months before the March 24th Meltdown.

139. What happened to P.K. was preventable. **The irrefutable evidence in this case reveals that Trinity Lutheran failed to act as a reasonable preschool in the same or similar circumstances when they:**

Failed to act in response to four months of their Teacher's clear, loud, direct, and repeated warnings about her unstable mental health.

Chose to beg, plead, and pressure their Teacher to come into work.

Failed to act in response to their Teacher's panic attacks at Trinity Lutheran.

Failed to act in response to their Teacher's reporting of suicidal ideations, inability to sleep, physical pain, panic attacks, inability to physically and mentally show up for work, attempts to call out/quit, and fear of her worst nightmare coming true – a meltdown at work.

Failed to ensure they were properly staffed with qualified individuals, fit to do the job.

Failed to supervise their Teacher by not dropping in on the classroom at any point throughout the entire day of March 24th, 2021.

Failed to supervise their Teacher by not viewing the video footage – live feed or recorded – on March 24th Meltdown.

Failed to remove their Teacher from the classroom upon watching the footage of her actions toward P.K. from 9:40am to 10:00am on March 24th, 2021.

Chose to ask their Teacher to come in on March 25th, 2021, putting her back in the classroom with P.K, following her impaired behavior the evening before.

Failed to terminate their Teacher.

Chose to ignore Patrick and Mellissa Killingsworth's right to know that their child had been subjected to prohibited punishments.

TRINITY LUTHERAN VIOLATED THE LAW

140. An independent investigation into the March 24th Meltdown was conducted by the Texas Department of Family and Protective Services (DFPS) and the Texas Health and Human Services Commission (THHS). Trinity Lutheran received several deficiency citations for violating the law:

746.1201(4) Trinity Lutheran Failed to Ensure No Child Abused, Neglected, or Exploited. The Teacher left children unsupervised and unattended *multiple times*. The Teacher used inappropriate discipline by roughly grabbing two children and placing P.K. in a closet.

746.1203(4) Trinity Lutheran Failed to Ensure Children Were Properly Supervised. A classroom was left unsupervised for periods of time when Teacher used the restroom and walked out.

746.2805(8) Trinity Lutheran Failed to Ensure that Children Were Not Subjected to Prohibited Punishments – Placing a Child in Locked or Dark Room. The Teacher placed P.K. in a closet, unattended with lights off and the door closed as a form of punishment.

746.2805(1) Trinity Lutheran Failed to Ensure that Children Were Not Subjected to Prohibited Punishments – Corporal Punishment. The Teacher used inappropriate discipline by grabbing two children by the arm and face. She roughly handled P.K. to the point that P.K. was pushed to the ground and jerked around by her arm.

746.2805(6) Trinity Lutheran Failed to Ensure that Children Were Not Subjected to Prohibited Punishments – Humiliating, Rejecting, Yelling. The Teacher inappropriately ridiculed, rejected, and yelled at multiple children. She threatened P.K. with calling the police to the point P.K. was extremely upset and crying.

TRINITY LUTHERAN HAS A HISTORY OF FAILING TO SUPERVISE EMPLOYEES AND FAILING TO KEEP KIDS SAFE AT PRESCHOOL

141. This is not the first time a child was severely physically and psychologically harmed while under the care and supervision of Trinity Lutheran. A previous investigation conducted by DFPS and THHS revealed an incident in which at least *two children were inappropriately sexually touched* by a Trinity Lutheran employee, while at the preschool. As a result of this incident, Trinity Lutheran installed audio and visual cameras and yet still, failed to properly supervise their own employees. Trinity Lutheran's continued failures led to the same injuries sustained by P.K.

WHAT HAPPENED AT TRINITY LUTHERAN HAS CHANGED P.K. FOREVER

142. Trinity Lutheran put 4-year-old P.K. at ground zero for the March 24th Meltdown. The psychological, mental, emotional, and physical injuries P.K. suffered have caused a substantial disruption of her life, impacting her forever.

143. Before her time at Trinity Lutheran, P.K. was a normal 4-year-old little girl. She was energetic, outgoing, independent, and confident. She rarely had nightmares, slept well, and was potty trained. She communicated well and never let frustration or disappointment discourage her from learning and experiencing something new. She was fearless.

144. On March 24th, 2021, P.K. came home complaining that her arm was hurting. Mellissa Killingsworth took a look at her and assumed that maybe she had just overstretched herself at gymnastics a couple days before, never suspecting she was injured at Trinity Lutheran. P.K. told her mom that her Teacher had called the cops. Naturally, Mrs. Killingsworth was puzzled by this comment but assumed that maybe there was a practice drill or a visit from the local police department. She never imagined that these comments were the first signs of the devastation.

145. On March 26th, 2021, P.K. was so emotional at school that Mellissa Killingsworth had to pick her up early – still not understanding what was wrong with her 4-year-old daughter. How could she? **Trinity Lutheran had chosen not to tell her what *they already knew*.**

146. After finally being told a portion of the story on Monday, March 29th, 2021, Patrick and Mellissa Killingsworth made a report with the police – Trinity Lutheran had chosen to not call the police. As a result of the investigation, P.K. went through a forensic interview with the Child Advocacy Center where she recounted what happened to her in shocking detail – everything from

being thrown out of the classroom to having the cops called on her and being locked in the closet with the lights off. P.K. reported being hit on her hand, forearm, and face, and having her pencil box and paper shoved at her. She told the interviewer that after it happened, she had marks on her eye, arm, and hand that went away, but her finger was still hurting. The interviewer observed and noted a mark and a scrape on P.K.'s hand that P.K. confirmed was from the Trinity Lutheran Teacher pinching her and scratching her with nails. P.K. even remembered the terrible things that were said to her throughout the day – truly heartbreaking things for a 4-year-old to remember so vividly.

147. P.K. was seen by her pediatrician, complaining of pain in her arm and face. A dime-sized bruise was still visible on P.K.'s back. While the physical pain, bruising, and scratches cleared up with time – the mental, psychological, and emotional injuries still impact her to this day. For months and months following the March Meltdown, P.K. had nightmares almost every night. She had regular potty accidents and is still terrified of small, dark places and police officers to this day.

148. P.K.'s fear, anxiety, and behavioral changes and challenges made it too difficult for her to continue on in regular preschool, schooling, and extracurriculars. To this day, P.K. is *still* in counseling as a result of her time at Trinity Lutheran and what she went through during the March 24th Meltdown.

149. P.K. and her family are working hard to get her back to that fearless, confident, energetic, and trusting girl she used to be. While progress has been made through love, patience, support, and therapy – **P.K. is not the kid she would have been had Trinity Lutheran not failed her.**

II. DISCOVERY CONTROL PLAN & CLAIM FOR RELIEF

150. Discovery in this matter is intended to be conducted under Level 3 of the Texas Rules of Civil Procedure.

151. As required by the Texas Rule of Civil Procedure 47(c), Plaintiffs' counsel states that Plaintiffs seek monetary relief over \$1,000,000.00; however, the amount of monetary relief awarded will ultimately be determined by a jury.

III. PARTIES

152. Plaintiffs Patrick and Mellissa Killingsworth are the biological parents of Plaintiff P.K. (Date of Birth: 05/11/2016), a minor, and are citizens and residents of Tom Green County, Texas.

153. Defendant Evangelical Lutheran Trinity Congregation d/b/a Trinity Lutheran School (hereinafter referred to as "Defendant") is a Texas Corporation doing business in this State. The Defendant operates a daycare under operation license number 516408, located at 3516 YMCA Drive, San Angelo, Texas 76904. Defendant has made an appearance in this case and has filed an Answer.

IV. JURISDICTION & VENUE

154. The Court has subject matter jurisdiction over this lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

155. Venue is proper in Tom Green Country, Texas, under Texas Civil Practices and Remedies Code Section 15.002(a) because this is the county where all or part of the events or omissions giving rise to the claim occurred.

**V. NO CHARITABLE IMMUNITY OR
LIMITATIONS ON LIABILITY**

156. Neither Trinity Lutheran School nor its employees are entitled to immunity under Texas Civil Practices & Remedies Code Chapter 84, or Texas Family Code § 264.174.

157. At all relevant times, as described above and based on the evidence Plaintiffs anticipate developing throughout this action, the acts and omissions of Trinity Lutheran School and its employees were willfully negligent and done with conscious indifference or reckless disregard for the safety of P.K.

VI. CAUSES OF ACTION

Count One - Negligence

158. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

159. The occurrence made the basis of this suit, reflected in the above paragraphs, and the resulting injuries and damages of Plaintiffs were proximately caused by the negligent conduct of the Defendant.

160. Defendant had a duty to maintain a safe environment for children in its care so as to prevent harm and injury to P.K. and other children similarly situated.

161. Defendant was negligent by breaching the duty that was owed to Plaintiffs.

162. Defendant failed to exercise ordinary care in one or more of the following acts or omissions, constituting negligence:

- a. Failing to exercise the care that was necessary under the circumstances;
- b. Failing to do what a reasonable preschool would have done under the circumstances;
- c. Failing to intervene to ensure a child's safety;
- d. Failing to maintain a safe environment for children;
- e. Failing to ensure that expectations for a child's behavior is appropriate for the developmental level of that child;
- f. Failing to employ teachers who demonstrate competency, good judgment, and self-control;
- g. Failing to ensure no child is abused, neglected, or exploited;
- h. Failing to properly hire, qualify, and train its employees on appropriate discipline, handling, and care for children;
- i. Failing to properly hire, qualify, and train its employees on intervening and reporting situations involving the use of prohibited punishments;
- j. Failing to properly supervise its teachers and other staff;
- k. Failing to act when a teacher communicates they are unable to do the job of caring for children;
- l. Choosing to place an unqualified, unfit, and unstable teacher in charge of children;
- m. Failing to use constructive and age-appropriate discipline methods for the child's level of understanding;
- n. Failing to ensure children are not subjected to prohibited punishments, such as yelling, screaming, humiliating, threatening, frightening, shaming, ridiculing, rejecting, ridiculing, shoving, pushing, yanking, hitting, and locking in a closet;
- o. Failing to immediately notify parents of a situation that placed their child at risk;
- p. Failing to immediately notify parents when their child was subjected to prohibited forms of punishment;
- q. Failing to adhere to the Texas Minimum Standards for Childcare.

163. Defendant had a duty to hire, train, and supervise its teachers, aides, director, principal, employees, and staff to prevent injury and ensure the safety of P.K., and other children similarly situated.

164. Defendant had a duty to hire, train, and supervise its teachers, aides, director, principal, employees, and staff to ensure that children were not subjected to inappropriate discipline and prohibited forms of punishment, to prevent injury to P.K. and other children similarly situated.

165. Defendant had a duty to ensure all employees comply with the Texas Minimum Standards for Child Care.

166. Defendant breached the duty of care by failing to properly care for the children; failing to qualify, train, and properly supervise employees; failing to appropriately discipline the children; failing to maintain a safe environment for children; and failing to immediately notify parents of any situation placing their child at risk or causing harm.

167. Defendant's negligent acts and/or omissions and breach of duties directly and proximately caused injury to Plaintiffs, which resulting in significant damages.

Count Two – Negligence Per Se

168. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

169. Defendant failed to exercise the mandatory standard of care in violation of the Texas Department of Family Protective Services, Minimum Standards of Child-Care Centers.

170. In the forgoing claims of negligence per se, Plaintiffs were, at all times, members of the class that the statutes were designed to protect.

171. Defendant's violation of the statutes was the proximate cause of the incident in question.

172. As a result of the Defendant's acts and/or omissions in violating the statutes, Plaintiffs sustained damages.

Count Three – Gross Negligence

173. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

174. Defendant's conduct was more than momentary thoughtfulness of inadvertence. Rather, the acts and/or omissions by Defendant in the preceding paragraphs constitute gross negligence as that term is defined in Texas Civil Practices and Remedies Code § 41.001(11).

175. Defendant's conduct involved an extreme degree of risk, considering the probability and magnitude of potential harm to the Plaintiffs. Defendant had actual, subjective awareness of the risk involved, but, nevertheless, proceeded in conscious indifference to the rights, safety, or welfare of Plaintiffs or of others similarly situated.

176. The above acts and/or omissions were singularly and cumulatively the proximate cause of the occurrence in question and the resulting injuries and damage sustained by Plaintiffs.

Count Four – Negligent Activity

177. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

178. Defendant is the owner, operator, and/or possessor of a preschool located at 3516 YMCA Drive, San Angelo, Texas 76904, operation license number 516408.

179. At the time of the incident, P.K. was minor placed in the care of Defendant and was thus an "invitee" to whom Defendant owed a duty exercise ordinary care.

180. Plaintiffs' injuries were the direct and contemporaneous result of Defendant's ongoing negligent activity on the premises at the time of the injuries and damages sustained.

181. Defendant owed Plaintiffs a legal duty to ensure P.K.'s safety in maintaining proper care over the children; ensuring that employees are necessarily hired, trained, and supervised; ensuring proper discipline methods are used; and ensuring that incidents placing children at risk are recorded and reported. Defendant breached these duties by failing to use proper forms of discipline; by failing to hire, train and supervise their employee-caregivers in the use of proper methods of discipline; and by failing to hire, train, and supervise employee-caregivers on the proper care of children. Such negligent activity on part of the Defendant proximately caused the injuries and other damages suffered by Plaintiffs.

VII. RESONDEAT SUPERIOR

182. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

183. The negligence, carelessness, and callousness of Defendant's employees proximately caused the damage and losses suffered by Plaintiffs as a result of the injury. At all times material to their action, Defendant employees were acting in the course and scope of their employment. Accordingly, Defendant may be held responsible for its employees' negligence under the doctrine of *respondeat superior*.

VIII. DAMAGES

184. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

185. As a direct and proximate cause of Defendant's negligent acts and/or omissions, Plaintiffs Patrick and Mellissa Killingsworth, individually, and as Parents and Next Friend of Plaintiff P.K., a minor child, suffered damages and injuries that include, but are not limited to:

- a. Physical pain and suffering in the past;
- b. Physical pain and suffering, in reasonable probability, sustain in the future;
- c. Mental anguish in the past;
- d. Mental anguish, in reasonable probability, sustained in the future;
- e. Fear and anxiety in the past;
- f. Fear and anxiety, in reasonable probability, sustained in the future;
- g. Inconvenience in the past;
- h. Inconvenience, in reasonable probability, sustained in the future;
- i. Reasonable and necessary medical expenses in the past;
- j. Reasonable and necessary medical expenses, in reasonable probability, sustained in the future;
- k. Loss of wages in the past;
- l. Loss of wages, in reasonable probability, sustained in the future;
- m. Loss of wage-earning capacity in the past;
- n. Loss of wage-earning capacity, in reasonable probability, sustained in the future;
- o. Physical impairment in the past;
- p. Physical impairment, in reasonable probability, sustained in the future;
- q. Loss of normal enjoyment of the pleasure of life in the past;
- r. Loss of the normal enjoyment of the pleasure of life, in reasonable probability, sustained in the future;

- s. Costs of suit; and
- t. All other relief, in law and equity, to which Plaintiffs may be entitled.

186. Plaintiffs' damages clearly exceed the minimum jurisdictional requirements for this Court. Plaintiffs, therefore, seek compensation by the Court and jury for their damages, in an amount to be determined by the jury.

IX. EXEMPLARY DAMAGES

187. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

188. Plaintiffs would further show that the acts and/or omissions of the Defendant complained of herein were committed knowingly, willfully, intentionally, with actual awareness, and with the specific and predetermined intention of enriching said Defendant at the expense of Plaintiffs.

189. The grossly negligent conduct of Defendant, as described herein, constitutes conduct for which the law allows the imposition of exemplary damages. Accordingly, Plaintiffs seek the award of exemplary damages against Defendant pursuant to Chapter 41 of the Texas Civil Practices and Remedies Code.

X. JURY TRIAL

190. Plaintiffs' demand a jury trial and have tendered the appropriate fee with the filing of this Original Petition.

XI. U.S. LIFE TABLES

191. Notice is hereby given that Plaintiffs intend to use the U.S. Life Tables as prepared by the Department of Health and Human Services.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendant be cited to appear and answer herein and upon final hearing hereof, they take, have and recover, of and from said Defendant, the above damages, exemplary damages, costs of court, pre-judgment interest, post-judgment interest, and for such other and further relief to which they may show themselves justly entitled.

Dated: June 19, 2026.

Respectfully submitted,

THE BUTTON LAW FIRM

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CERTIFICATE OF SERVICE

This is to certify that on this the 19th day of June 2026, a true and correct copy of the above and foregoing was forwarded to the following counsel of record via facsimile and email:

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By: /s/Russell Button
Russell Button

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Russell Button on behalf of Russell Button

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Filing Code Description: Amended Filing

Filing Description: PLAINTIFFS??? SECOND AMENDED PETITION

Status as of 6/19/2026 9:27 AM CST

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